

E-FILED 10/10/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHARLES IVIE,

NO. C 07-03717 RS

Plaintiff,

**ORDER THAT CASE BE
REASSIGNED AND
RECOMMENDATION THAT
CASE BE DISMISSED WITH
LEAVE TO AMEND**

v.

U.S. GOVERNMENT, et al.

Defendants.

Plaintiff filed has filed an application to proceed *in forma pauperis*.¹ Based on the application and the file herein,

IT IS HEREBY ORDERED that this case be reassigned to a District Court Judge² with the recommendation that the case be dismissed, with leave to amend. A federal court must dismiss an *in forma pauperis* complaint if the complaint is: 1) frivolous; 2) fails to state a claim on which relief may be granted; or seeks 3) monetary relief against a defendant who is immune from such relief. See, 28 U.S.C. § 1915(e)(2); see also *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

Here, the basis of plaintiff's claim is far from clear, but it appears that he believes he is wrongfully being impeded from traveling to Canada as the result of his criminal record, and that matters in the documentation of that record are factually incorrect. As a result, plaintiff has named

¹ One handwritten notation on the application appears to assert that plaintiff has, or is entitled to "perpetual" *in forma pauperis* status.

² This court is ordering reassignment to a District Court Judge because, absent consent of all parties, a Magistrate Judge does not have authority to dismiss the case.

1 as defendants the U.S. and Canadian governments, along with any number of governmental entities
2 and agencies. Plaintiff's existing pleadings, which are largely handwritten and barely legible, are
3 insufficient to state a claim.

4 A district court must give a *pro se* litigant an opportunity to amend his or her complaint,
5 unless it is absolutely clear that no amendment could cure the defect. See, *Lopez v. Smith*, 203 F.3d
6 1122, 1130 (9th Cir. 2000) (en banc). Here, although it appears doubtful that all of the
7 governmental entities sued by plaintiff are subject to suit or would have any duty to him, it is at least
8 conceivable that plaintiff could be entitled to some form of relief if in fact some official records are
9 incorrect.³ Accordingly, dismissal with leave to amend is recommended.

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11 IT IS SO ORDERED.

12 Dated: 10/9/07


RICHARD SEEBORG
United States Magistrate Judge

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27 ³ Whether there would be any basis for *federal* jurisdiction over any such claim is also
28 highly questionable.

United States District Court
For the Northern District of California

THIS IS TO CERTIFY THAT A COPY OF THIS ORDER WAS MAILED TO:

Charles Ivie
20 Helvic Avenue
Monterey, CA 93940

Dated: October 10, 2007

/s/ BAK
Chambers of Magistrate Judge Richard Seeborg